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Paper No. 9
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ziptronix, Inc.

Serial No. 78134624

Laura M. Kelley of Myers Bigel Sibley & Sajovec, P.A. for
Ziptronix, Inc.

Jacqueline A. Lavine, Trademark Examining Attorney, Law Office
116 (Meryl Hershkowitz, Managing Attorney).

Before Hohein, Chapman and Holtzman, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Ziptronix, Inc. has filed an application to register
the term "ZIP CHIP" on the Principal Register for "integrated
circuits" in International Class 9; "custom manufacture of
integrated circuits for others" in International Class 40; and
"custom design of integrated circuits for others" in
International Class 42.¹

Registration has been finally refused under Section
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the

¹ Ser. No. 78134624, filed on June 11, 2002, which is based on an
allegation of a bona fide intention to use the such term in commerce.

ground that, when used in connection with applicant's goods and services, the term "ZIP CHIP" is merely descriptive thereof.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of such use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is

not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, while conceding in its brief that "'zip' can refer to compression formats, and 'chip' can refer to a type of computer chip," asserts that because "these terms have other meanings as well," the combination thereof into the term "ZIP CHIP" is not merely descriptive of its goods and services. In particular, applicant notes that it has made of record the following definitions which it "found in a search on Mirriam-Webster.com" [sic]:

ZIP: to close or open with or as if with a zipper; to enclose or wrap by fastening a zipper; to cause (a zipper) to open or shut; to move, act, or function with speed and vigor; to travel with a sharp hissing or humming sound; to impart speed or force to; to add zest, interest or life to; to transport or propel with speed.

While acknowledging "the fact that a term may have different meanings is not controlling," applicant contends in view thereof that its "ZIP CHIP mark is not limited to 'compression formats' and 'a type of material on which an integrated circuit is embedded'," as argued by the Examining Attorney in her final refusal. Applicant maintains, therefore, that "it is not readily apparent from the term ZIP CHIP exactly what the goods or services offered are," especially since, applicant admits, "[i]ntegrated circuits have many functions other than providing compression formats." Applicant accordingly concludes that:

Based on the numerous definitions shown above and the fact that the proposed uses of the mark are much broader than "compression formats" and "a type of material on which an integrated circuit is embedded", the mark ZIP

CHIP is at most merely suggestive of a portion of Appellant's goods and services.

The Examining Attorney, on the other hand, although conceding in her brief that a "mark that combines descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning," argues that in this case, however, "each component retains its descriptive significance in relation to the goods or services, [such that] the combination results in a composite that is itself descriptive." In particular, the Examining Attorney, while also conceding in her brief that "ZIP has many meanings," cites an "attached definition from PCWebopaedia.com where ZIP is defined as a [popular data] compression format"² and urges that "the relevant meaning here is a 'compression format' as relating to computers." Noting further that "CHIP is defined as an 'integrated circuit'" by both "Dictionary.com and MirriamWebsters.com" [sic], the Examining Attorney asserts that the "relevant meaning of CHIP is an integrated circuit, a synonym for applicant's goods and the subject of applicant's manufacturing and design services." In view thereof, the

² Although indicating that several "definitions were attached in the Final Office Action," the Examining Attorney states in her brief that "apparently the definition regarding ZIP was not properly reproduced on the paper" and thus, since such may not be of record, requests that the Board "take judicial notice of this definition because it comes from a standard reference work." Inasmuch as it is settled that the Board may properly take judicial notice of definitions from dictionaries and other standard reference works, the Examining Attorney's request is granted. See, e.g., *In re Hartop & Brandes*, 311 F.2d 249, 135 USPQ 419, 423 n. 6 (CCPA 1962); *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 n. 7 (TTAB 1981).

Examining Attorney maintains that, when the terms "ZIP" and "CHIP" are combined:

Clearly ZIP CHIP refers to an integrated circuit that contains a compressed format. In fact, the examining attorney attached to the Final Refusal a random sampling of excerpts of websites and articles from the Google Research Database showing the common meaning and usage of the term ZIP CHIP. These articles show that others use the term ZIP CHIP descriptively in relationship [sic] to goods and services similar to those identified by the applicant in its [application].

Among the articles referred to above, as well as similar articles made of record with the first office action, are the following (emphasis added):

"If your computer has 1MB of video memory, you can upgrade to 2MB of video memory by inserting two 256Kb x 16 DRAM **ZIP chips**.

....
To install a **ZIP chip**, align its notched corner with the end of the socket near the riser card connector." -- <http://support.tandy.com/doc2/2680.htm>;

"The ZIP ADAPTER enables SIMCHECK to test individual DRAM **chips which are packaged in the ZIP (Zigzag Inline Package) standard**.
....

....
If the **ZIP chip** is 256Kx1 it will have 16 pins, while **ZIP chips** of other sizes have 20 pins." -- <http://testequipmentdepot.com/-/innovations/simcheckii/adapters/zipdrama-dapter.htm>;

"Want to turn your Angel into an Archangel? Consider the new Gabriel chip from Kennesaw Mountain Markers. Gabriel is a replacement chip for the WDP Angel that comes mounted on a standard WDP board

So what does Gabriel offer? Like the **Zip chip** from WDP, Gabriel offers semi-auto, burst mode, and full-auto firing modes." --

http://www.paintballravi.com/Articles/PGI%20stuff/PGI_Dope_September.html; and

"ZIP chips are fairly fragile, and their vertical design makes them an incredible pig to remove from their homes." -- <http://www.pwr.wroc.pl/AMIGA/AR//ar501/Sections/review/1/html>.

Moreover, in addition to the definition of "ZIP" from "PCWebopaedia.com" which, as indicated above, is relied on by the Examining Attorney, the record contains the following definition of "chip" retrieved from the same source:

A small piece of semiconducting material (usually silicon) on which an integrated circuit is embedded. A typical chip is less than ¼-square inches and can contain millions of electronic components (transistors). Computers consist of many chips placed on electronic boards called printed circuit boards.

There are different types of chips. For example, CPU chips (also called microprocessors) contain an entire processing unit, whereas memory chips contain blank memory.

Chips come in a variety of packages. The three most common are:

- DIPs : Dual in-line packages are the traditional buglike chips that have anywhere from 8 to 40 legs, evenly divided in two rows.
- PGAs : Pin-grid arrays are square chips in which the pins are arranged in concentric squares.
- SIPs : Single in-line packages are chips that have just one row of legs in a straight line like a comb.

In addition to these types of chips, there are also single in-line memory modules (SIMMs), which consist of up to nine chips packaged as a single unit.

Furthermore, we judicially notice the following pertinent definitions from The Computer Glossary (9th ed. 2001), which defines "chip" at 56 as:

A set of microminiaturized, electronic circuits that are designed for use as processors and memory in computers and countless consumer and industrial products. The terms *chip*, *integrated circuit* and *microchip* are synonymous.

The same dictionary also defines "chip carrier" at 56 as "[t]he package that a chip is mounted in" and sets forth "zip" at 453 as "(ZIP) (Zig-Zag Inline Package) Similar to a DIP, but smaller and tilted on its side for mounting on boards with limited space." Likewise, judicial notice is taken that the Computer Desktop Encyclopedia (9th ed. 2001) contains the identical definition of "chip" at 133; lists basically the same definition of "chip carrier" at 138 while adding "[s]ee *chip package*," which in turn is defined at 138 as "[t]he housing that chips come in for plugging into (socket mount) or soldering onto (surface mount) the printed circuit board. See *CDIP*, ... *DIP*, *flatpack*, ... and *ZIP*"; and in more detail sets forth "zip" at 1103 as "(ZIP) (Zig-Zag Inline Package) A chip package similar to a DIP, but both rows of pins come out of one side in an alternating pattern."

In view thereof, the Examining Attorney maintains in her brief that:

[W]hile ZIP could also refer to a zipper and CHIP could refer to a food snack, considering applicant's computer related goods and services, clearly ZIP CHIP is more likely to be understood to refer to integrated circuits embedded with compressed formats. Descriptiveness is considered in relation to the relevant goods and services. The fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. *In re Chopper Industries*, 222 USPQ 258 (TTAB 1974); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 591 (TTAB 1979); *In re Champion International*

Corp., 183 USPQ 318 (TTAB 1974); TMEP §1209.03(e).

She also contends, as to applicant's argument that its goods and services include more than just integrated circuits with compressed formats, that "a term need not describe all of the purposes, functions, characteristics or features of the goods and/or services to be merely descriptive. Instead, she properly notes that "it is sufficient that the term describe only one attribute of the goods and/or services to be found merely descriptive," citing "*In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973); and TMEP §1209.01(b)."

Upon consideration of the evidence and arguments presented, we agree with the Examining Attorney that, when considered in its entirety, the term "ZIP CHIP" is merely descriptive of applicant's goods and services. Such term, as shown by the evidence noted above, immediately conveys, without speculation or conjecture, both that its integrated circuits include those which, as applicant admits, provide compression formats and that its chips include those available in an industry standard zig-zag in-line package. The term also merely describes a significant attribute of applicant's services, which involve both the custom manufacture and the custom design of integrated circuits or chips, as applicant's goods are also known, with such zip features as either a compression format or a zig-zag in-line package. See, e.g., *In re Wickerware, Inc.*, 227 USPQ 970, 971 (TTAB 1985) ["WICKERWARE" for "mail order and distributorship services in the field of wicker furniture and accessories"]

designates "a central characteristic of appellant's services" and thus is not registrable]. Plainly, when viewed in the context of applicant's goods and services, rather than in the abstract as applicant essentially urges, there is nothing in the term "ZIP CHIP" which, to those who would purchase and/or utilize integrated circuits, would be ambiguous, incongruous or otherwise require the exercise of any imagination, cogitation or mental processing or would necessitate the gathering of further information in order for the merely descriptive significance of such term to be readily apparent. In short, because the term "ZIP CHIP" designates a type or category of integrated circuits and, hence, also conveys forthwith the nature of the products which are custom manufactured and/or designed for others, such term accordingly is merely descriptive of applicant's goods and services within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed as to all three classes of goods and services.